

ACLARA SOFTWARE LICENSE AGREEMENT

This Software License Agreement is entered into as of the date last signed below (the "**Effective Date**") by and between:

Aclara Technologies LLC, an Ohio Limited Liability Company
77 West Port Plaza
Suite 500
St. Louis, MO 63146-3126
(Referred to herein as "**Aclara**")

And City of Ann Arbor
301 E. Huron Street
P.O. Box 8647
Ann Arbor, Michigan 48104
(Referred to herein as "Licensee")

Individually, Aclara® and Licensee may be referred to as "**Party**" and collectively as "**Parties**".

Whereas, Aclara has developed certain proprietary equipment and software which together constitute the Aclara® Technology System which performs automatic meter reading and collects metering data utilized by providers of electricity, gas and water to consumers;

Whereas, Licensee desires to license from Aclara, and Aclara desires to license to Licensee certain computer software and obtain from Aclara certain software maintenance and support services as more fully described below:

NOW THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the Parties agree as follows:

1. **Definitions.** The following words and phrases shall have the following meanings for the purposes of this Software License Agreement:
 - A. "**Software License Agreement**" means this document and the following Attachments all of which are attached hereto and made a part hereof, and any amendments, modifications or supplements thereto or attachments incorporated therein:
 - 1) Attachment A - Listing of Aclara Licensed Software, Third Party Licensed Software, Licensing Parameters, Third Party Software Not Licensed, and License Fees.
 - 2) Exhibit A – Maintenance Agreement
 - 3) Exhibit B – Aclara Pricing for the City of Ann Arbor
 - B. "**Aclara Licensed Software**" means the software described on Attachment A as "Aclara Software".
 - C. "**Aclara Technology System**" means the system comprised, in part, of: 1) the Designated Equipment purchased by Licensee from Distributor and 2) the Licensed Software licensed to Licensee hereunder.
 - D. "**Confidential Information**" means the proprietary, confidential, trade secret or nonpublic information of a Party that is disclosed in printed, written, graphic, photographic or other tangible form, verbally, electronically or by observation to the other Party, and with respect to Aclara, includes without limitation, Aclara Licensed Software and Documentation.
 - E. "**Delivery**" shall mean the remote installation of the Software on the Licensee-provided Designated Equipment, or, if applicable, upon the Delivery of the Designated Equipment provided by Aclara on which the Software is installed.

- F. "Designated Equipment" means the computer equipment of Licensee in which Aclara pre-installs or remotely installs (after purchase) the Licensed Software and such additional equipment and back-up equipment as Licensee may from time to time designate in writing, and which in all cases must meet the Designated Equipment Specifications.
- G. "Designated Equipment Specifications" means Aclara's functional and technical requirements for the Designated Equipment which must be met by Licensee as a condition of the license granted herein.
- H. "Documentation" means basic, descriptive, training and instructive materials pertinent to the Licensed Software.
- I. "Hosted Solution(s)" means the Software, systems and servers which reside at the Aclara facility.
- J. "Licensed Software" means the Aclara Licensed Software and the Third Party Licensed Software.
- K. "Licensing Parameters" means Central Processing Units (CPUs), Processors (including Sockets and/or Cores), Seats, Interfaces and End Points connected to the system (Meters, LCTs, CSTs, DSIs, MTUs, DCUs, etc.) and permitted number of Maximum Utilities (unless a Multi-Utility license) as set forth on Attachment A.
- L. "Maintenance Fees" means the annual fees due and payable by Licensee for Maintenance Services, as set forth in the Maintenance Agreement. (not applicable if Hosted system)
- M. "Maintenance Services" means support and maintenance of the Aclara Licensed Software which is offered to Licensee under a separate Maintenance Agreement.
- N. "Multi-Utility" means, as set forth in Attachment A, a license under the Licensing Parameters of which the Licensee is allowed to read meters for another utility.
- O. "Non-Hosted Solution(s)" means the Software, systems and servers which reside at the Licensee's facility and which are available for license as part of the Aclara Licensed Software offerings set forth in Attachment A.
- P. "Object Code" means the instructions or statements comprising the Licensed Software expressed in machine-readable language, being the machine level representations that actually cause the computer to execute instructions and operations.
- Q. "Peripheral Programs" mean computer programs which do not include any logic or code of the Licensed Software and which use the output of the Licensed Software as input to another computer program.
- R. "Software Release" means a release of licensed or available Software that includes Software Updates or Software Upgrades. Software Releases may also be developed to address updates of Third-Party Licensed Software and hardware.
- S. "Software Update" means a modification or addition that, when made or added to the Software or Third Party Licensed Software, establishes material conformity of the Software or the Third Party Licensed Software to its respective specification, i.e. bug fixes and/or enhancement to existing function.
- T. "Software Upgrade" means a modification or addition to Licensed Software that is beyond the scope of the definition of Software Updates; and that may be offered to Licensee for licensed use and maintenance. If Licensee requests Aclara to add a Software Upgrade of the Software licensed under this Software License Agreement such Software Upgrade shall be incorporated by written Amendment.

- U. "Source Code" means a set of instructions expressed in human readable language from which the Object Code is derived.
- V. "Third Party Licensed Software" means those software applications that have not been created or manufactured by Aclara as more particularly described on the Attachment A as "Third Party Software—Included in this Software License Agreement."

2. License Grants and Permitted Use.

- A. License to Licensed Software. Subject to the terms and conditions set forth herein, as of the date of Delivery, Aclara grants to Licensee, and Licensee accepts, a fully paid, non-exclusive, non-transferable, non-sub licensable, revocable license to use only that Licensed Software in Object Code format for which Licensee has purchased licenses as specified in Attachment A. Third Party Licensed Software is sublicensed by Aclara to Licensee pursuant to sublicensing agreements with the respective third parties identified on Attachment A.
- B. License to Documentation. Subject to the terms and conditions set forth herein, as of the date of Delivery, Aclara hereby grants to Licensee, and Licensee accepts, a fully paid, non-exclusive, non-transferable, non-sub licensable, revocable license to use the Documentation solely in connection with its use of the Licensed Software.
- C. Hosted Solution. Aclara may offer its Hosted Solution as part of the Aclara Licensed Software offerings set forth in Attachment A. An Annual Service Provider ("ASP") Fee for the Hosted Solution may apply as set forth in Attachment A.
- D. Permitted Uses of Licensed Software and Documentation. Licensee may use the Licensed Software only on the Designated Equipment, solely in connection with use of Licensee's Aclara Technology System, and strictly within the scope of the Documentation and applicable Licensing Parameters as set forth in Attachment A. Licensee may run a reasonable number of copies of the Licensed Software for use in the Designated Equipment and for back-up and archival purposes only. All such copies shall include any copyright notices appearing in the Licensed Software. Licensee may copy and modify the Documentation to coordinate the Documentation with Licensee's own internal training and working procedures, but Licensee may not distribute any Documentation outside of its business enterprise or for commercial purposes. Aclara shall have no liability or obligation to Licensee with respect to any such modified Documentation and any additional costs incurred by Aclara in the integration of maintenance changes caused by such modifications shall be reimbursed to Aclara by Licensee.

3. Restrictions on Use. Licensee's use of the Licensed Software and Documentation is restricted and limited as follows:

- A. Licensing Parameters. Licensee's use of the Licensed Software is restricted to the Licensing Parameters applicable to Licensee as set forth in Attachment A. Use of the Licensed Software in excess of Licensee's Licensing Parameters is subject to the express written consent of Aclara. If Licensee exceeds the Licensing Parameters, irrespective of Aclara's consent, Licensee must pay all additional License Fees arising from additional licenses and any Multi-Utility licenses (if applicable).
- B. Aclara Technology System.
 - 1) Single Utility License. Unless Licensee is purchasing a Multi-Utility license pursuant to Attachment A, the Licensed Software is licensed to Licensee for use solely in Licensee's own utility business and solely in connection with Licensee's use of Licensee's Aclara Technology System.
 - 2) Multi-Utility License. If Licensee has a Multi-Utility license, as set forth in Attachment A, Licensee's use of the Licensed Software and Documentation is restricted to (i) Licensee's internal use solely in connection with Licensee's use of Licensee's Aclara Technology

System and to (ii) Licensee's use in providing meter reading services to its customer/utilities utilizing Licensee's Aclara Technology System. The customer/utilities to which the Licensee may provide such services are limited to those identified in Attachment A. It is the obligation of Licensee to update such list no less frequently than annually.

- C. Additional Restrictions. Licensee is strictly prohibited from: (a) altering, decompiling, disassembling, decrypting, or reverse engineering the Licensed Software or otherwise reducing the Licensed Software to Source Code format; (b) copying the Licensed Software or Documentation except as permitted herein; (c) creating or attempting to create a derivative work from the Licensed Software; (d) storing or transmitting material that contains software viruses or other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of the Aclara Technology System; (e) renting, leasing, granting a security interest in, or otherwise transferring or attempting to transfer any rights in or to the Licensed Software, making the Licensed Software available to third parties, or allowing the use of the Licensed Software for the benefit of any third party, whether on a service bureau or time sharing basis or otherwise; (f) disclosing, providing, or otherwise making available trade secrets or other Confidential Information contained within the Licensed Software and/or Documentation in any form to any third party without the prior written consent of Aclara; and/or (g) removing or defacing any legends, restrictions, product identification, copyright, trademark or other proprietary notices from the Licensed Software or Documentation. Aclara shall have the right to seek all available damages in law and in equity in the event of a breach of this Section 3 and such right shall survive termination of this Software License Agreement.
- D. Compliance with Laws. When using the Licensed Software and Documentation, Licensee must at all times comply with all applicable laws and regulations of the United States and the States, Country and localities in which the Licensed Software and Documentation is used.
- E. Use on Designated Equipment. Licensee's use of the Licensed Software is restricted to use on the Designated Equipment. Should Licensee desire to transfer the operation of the Licensed Software to a computer other than the Designated Equipment, Licensee shall notify Aclara upon such transfer. Such computer must meet the Designated Equipment Specifications provided by Aclara to Licensee for applicable Designated Equipment. Upon such notification, such computer shall become the Designated Equipment. Under no circumstances may the Licensed Software be used for production purposes on other than the Designated Equipment.
- F. Temporary Use. Without notice to Aclara, Licensee may temporarily transfer the operation of the Licensed Software to a backup computer if the Designated Equipment is inoperative due to malfunction, or during the performance of preventive maintenance, engineering changes or changes in features or model until the Designated Equipment is restored to operative status and processing of the data already entered into the back up computer is completed.

4. Audits.

- A. Right to Audit. Upon thirty (30) calendar days' prior written notice, Aclara may, at Aclara's expense, audit Licensee's use of the Licensed Software to confirm that (a) Licensee is using the Licensed Software in accordance with the terms and conditions of this Agreement and all applicable laws and regulations, (b) the quantity of Licensed Software and manner of deployment and use is consistent with Licensee's Licensing Parameters, the (c) License Fees calculated and invoiced to Licensee are consistent with such deployment and use, and (d) all License Fees properly due and owing have been invoiced and paid by Licensee. Audits shall be conducted by Aclara or its agent during Licensee's normal business hours. Licensee agrees to cooperate with all audit activities and provide Aclara with reasonable assistance and access to all books, records and information relevant to the audit. Audits shall be limited to once every twelve (12) month period for so long as Licensee continues to own and operate the Aclara Technology System, except if additional audits are required by law or if Aclara reasonably believes that a breach of this Agreement has occurred.
- B. Licensee Books and Records. Licensee shall maintain written and/or electronic records of all of Licensee's Designated Equipment and Licensed Software deployments and of its payments of

License Fees and Maintenance Fees (if any) (collectively, "Books and Records"). Licensee shall provide all necessary copies of such Books and Records in written and electronic format to Aclara upon request and during an audit. Each audit conducted shall be treated as a confidential undertaking by Aclara, and all findings discovered under an audit are deemed the Confidential Information of both Parties subject to the terms of Section 12 hereof.

- C. Effects of Audit. If an audit reveals that Licensee has underpaid any License Fees or Maintenance Fees, Aclara may invoice Licensee for any such underpaid amounts, and Licensee shall remit payment net thirty (30) days from date of invoice. If the aggregate underpaid License Fees or any Maintenance Fees exceed fifteen percent (15%) of the aggregate License Fees (or Maintenance Fees if applicable) owed to Aclara, Licensee shall pay Aclara's or its agent's reasonable costs of conducting the audit. If an audit discovers any other breach of this Agreement, Aclara may invoke its rights of termination and all other remedies available to it under this Agreement, in law and in equity.
5. Annual Service Provider ("ASP") Fee for Hosted Solution. Upon Delivery of the Licensed Software, Aclara shall issue an invoice for the ASP Fee set forth on Attachment A. Such invoice shall be due and payable, without discount, within 30 days of issuance. The ASP Fee is exclusive of all taxes imposed by any governmental agency based on Licensee's use or possession of the Licensed Software, including, but not limited to, state or local sales, use and personal property taxes, all of which shall be Licensee's sole responsibility.
6. Ownership of Licensed Software and Documentation. Aclara is the owner of the Aclara Licensed Software and Documentation. The Third Party Licensed Software is owned by the third parties named on Attachment A as set forth opposite their respective product.
7. Warranties. In connection with the Licensed Software and any services provided hereunder, Aclara makes the following warranties:
- A. Licensed Software. With respect to Aclara Licensed Software and any updates or upgrades thereto provided to Licensee:
- 1) Aclara is the owner of the Aclara Licensed Software and has the right and authority to license the Aclara Licensed Software to Licensee;
 - 2) With respect to Third Party Licensed Software, Aclara has the right to license such Third Party Licensed Software to Licensee and has paid all applicable fees with respect to such right; and
 - 3) The Aclara Licensed Software will operate substantially in accordance with the Documentation licensed by Aclara pursuant to the terms of this Software License Agreement when used in accordance with the terms of such Documentation and the Licensing Parameters.
- B. Remedies. If Licensee believes a breach of the foregoing warranties has occurred within twelve (12) months from Delivery of the Aclara Licensed Software, Licensee shall promptly notify Aclara, and Aclara shall investigate the warranty breach. If Aclara is able to replicate the error and confirm that a warranty breach (not subject to exclusion) has occurred during the foregoing period, Aclara shall, at its cost, perform such work as is necessary to remedy the breach as soon as commercially practicable. If Aclara breaches the warranties set forth in Section 7A(i) or (ii) and a claim is brought against Licensee as a result thereof, the indemnification set forth in Section 13 will apply as Licensee's remedy. If Aclara is unable to cure a warranty breach within a reasonable period of time, Licensee may terminate this Agreement for cause. The foregoing are Licensee's sole and exclusive remedies for breach of the warranties set forth herein.
- C. Disclaimers.

- 1) Except as expressly provided herein, Aclara expressly disclaims all express and implied warranties and any liability with respect to any Third Party Licensed Software. Licensee acknowledges and agrees that any Third Party Licensed Software provided by Aclara is subject only to the warranties made by the creator, manufacturer or licensor of such Third Party Licensed Software.
- 2) The warranties provided herein shall be deemed null and void, and Aclara shall be forever released from any obligations under these warranties or any liability to Licensee for any damages incurred by Licensee or claims of any kind arising from (i) Licensee's violation of any of its obligations or use restrictions set forth herein, (ii) any unauthorized use of or modifications, alterations, misapplications, or repairs made to all or any portion of the Aclara Technology System by Licensee or persons other than Aclara Personnel, (iii) Licensee's negligence, willful misconduct, or accidents, or (iv) normal wear and tear.

THE WARRANTIES SET FORTH IN THIS SOFTWARE LICENSE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

8. Term and Termination.

- A. Term. This Software License Agreement shall commence upon the Effective Date and, unless sooner terminated as provided herein, shall remain in effect so long as Licensee continues to own and operate the Aclara Technology System. The licenses granted hereunder shall commence on Delivery.
- B. Automatic Termination. This Software License Agreement and the licenses granted hereunder shall automatically and immediately terminate upon the date that Licensee ceases owning and operating the Aclara Technology System for any reason.
- C. Termination for Cause. Aclara may terminate this Software License Agreement and the licenses granted hereunder:
 - 1) for any material breach or default by Licensee upon notice in writing to Licensee, specifying the breach or default by Licensee, and Licensee's failure to cure such breach or default within 30 days from the date of its receipt of such notice;
 - 2) upon Licensee's ceasing to do business;
 - 3) upon the dissolution of Licensee;
 - 4) upon the filing of any petition for declaration of bankruptcy or insolvency by or against Licensee which is not withdrawn or dismissed within 30 days; or
 - 5) upon the appointment of a receiver for Licensee.
- D. Termination for Convenience. Licensee may terminate this Software License Agreement without cause at any time upon 30 days' notice in writing to Aclara.
- E. Effects of Termination. Upon the cessation of use of the Licensed Software by Licensee or upon the termination of this Software License Agreement as herein provided, Licensee shall promptly return to Aclara all copies of the Licensed Software and Documentation or destroy same and provide to Aclara a certificate of destruction in form and content satisfactory to Aclara and executed by an officer of Licensee. Each Party shall likewise return to the other Party all copies of the other Party's Confidential Information in accordance with Section 12E hereof.

9. Peripheral Programs. In order to make efficient use of the data generated by the Licensed Software, Licensee shall have the right to develop one or more Peripheral Programs. Aclara shall have no rights to or obligations with respect to Peripheral Programs.
10. Aclara Maintenance Agreement. Aclara offers Maintenance Services to Licensees under a separate Maintenance Agreement, as may be updated from time to time and available to Licensee upon request.
11. Third Party Beneficiaries. With respect to the owners or licensors of Third Party Licensed Software, such owners or licensors are third party beneficiaries of this Software License Agreement.
12. Confidentiality. Each Party may obtain access to the other Party's Confidential Information during the Term hereof. For purposes of this Section 12, the term "Discloser" means the Party who has, through any of the forgoing means, intentionally or unintentionally, provided its Confidential Information to the other Party; and the term "Recipient" means the Party receiving or obtaining access to the Discloser's Confidential Information.
 - A. Scope of Protection and Use. Each Party shall treat the other Party's Confidential Information in manner similar to the manner it treats its own similar information, and in no event with less than reasonable care. Neither Party shall disclose the other Party's Confidential Information to any third party or use the other Party's Confidential Information for any purpose other than in the performance of this Software License Agreement. Recipient shall hold the Confidential Information in confidence and only disclose the Confidential Information to its officers, employees, consultants, counsel, affiliates, independent contractors, or agents (collectively "**Representatives**") who (i) need the Confidential Information to assist the Recipient with performing its obligations or exercising its rights under this Software License Agreement, (ii) have executed a nondisclosure or confidentiality agreement with Recipient containing terms at least as protective as the terms in this Software License Agreement and such agreement applies to Discloser's Confidential Information, and (iii) have been instructed that the information they are receiving is the Discloser's Confidential Information that must be protected in accordance with this Software License Agreement and the terms of the Representative's nondisclosure agreement.
 - B. Exceptions. Except for any portion of Aclara's Confidential Information that is a trade secret and which shall be deemed Confidential Information for so long as it is a trade secret Confidential Information excludes information that:
 - 1) is or becomes part of the public domain without violation of this Software License Agreement by Recipient;
 - 2) is already in Recipient's possession free of any restriction on use or disclosure;
 - 3) becomes available to Recipient from a third party provided that Recipient was free from restriction on the disclosure of the information; or
 - 4) has been independently developed by Recipient.
 - C. Permitted Disclosure. If Recipient is required by legal proceeding discovery request "open record" or equivalent request, investigative demand, subpoena, court or government order to disclose Confidential Information, Recipient may disclose such Confidential Information provided that:
 - 1) the disclosure is limited to the extent and purpose legally required; and
 - 2) prior to any disclosure and if permitted by applicable law, Recipient shall immediately notify Discloser in writing of the existence, terms, and conditions of the required disclosure and, at Discloser's request and expense, cooperate in obtaining a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.
 - D. Recipient Liability. Recipient shall be responsible for any violation of this Software License Agreement by its Representatives and liable for any damages to Discloser arising from any such

violation. Recipient shall use reasonable efforts to restrain its Representatives (including Representatives who, subsequent to the date of this Software License Agreement, become former Representatives) from unauthorized use or disclosure of the Confidential Information.

- E. Ownership Rights. All Confidential Information shall, between Discloser and Recipient, remain the property of Discloser. Upon termination of this Software License Agreement for any reason, Recipient shall promptly return all Disclosed Information of Discloser and destroy, and provide written certification to Discloser of such destruction, all other materials embodying the Disclosed Information of Discloser.
- F. Independent Developments. Recipient may at any time independently develop information similar to, or products and services that compete with products or services identified in, the Disclosed Information, provided that Discloser's Confidential Information is not used in any such development.
- G. Injunctive Relief. The Parties stipulate that a breach of this Section 12 by Recipient will cause immediate and irreparable harm and significant injury to Discloser, for which there is no adequate remedy at law and that Discloser shall be entitled, in addition to any other rights and remedies it may have, to injunctive relief, specific performance and other equitable remedies to restrain any threatened, continuing, or further breach of this Section 12. Recipient shall immediately advise Discloser of any discovered breach by Recipient or its Representatives of this Software License Agreement and shall reasonably cooperate, at Recipient's expense, with Discloser in retrieving the disclosed Confidential Information and restricting any continuing breach.

13. Indemnity.

- A. By Aclara. Aclara shall defend Licensee from and against any third party actions, allegations, suits or claims ("**Claims**") to the extent alleging that the most current version of the Aclara Licensed Software, when used by Licensee strictly in accordance with the terms of this Software License Agreement, infringes a third party's United States patent, copyright, trademark, or trade secret, and Aclara shall indemnify and hold harmless Licensee from all damages, costs and liabilities awarded to such third party by legal judgment or settlement resulting from such Claims. The foregoing indemnity obligation is subject to the following: (i) Licensee promptly notifies Aclara in writing of such Claims; (ii) Licensee fully cooperates with Aclara in assisting in the defense or settlement of such Claims; and (iii) Aclara has the sole right to conduct the defense of such Claims or to settle such Claims.
- B. Exceptions. Notwithstanding the foregoing, Aclara shall not be liable for or obligated to indemnify Licensee for any Claims based on or arising from the follow "**Exceptions**": (i) Licensee's misuse or unauthorized modification of the Aclara Licensed Software, (ii) Licensee's failure to use corrections or enhancements or to run the most recent version of the Aclara Licensed Software, if any such actions would have prevented the Claims, (iii) use of the Aclara Licensed Software in combination with any computer programs or applications, operating system, material, service or information not provided or authorized in writing by Aclara for such use, or (d) any use of the Aclara Licensed Software for the benefit of any third party other than Licensee.
- C. Enjoinment. In the event any the Aclara Licensed Software that is subject to any Claims is held in such suit to be infringing or misappropriating or its use by Licensee is enjoined or limited in any manner, or Aclara believes that such holding or enjoining is likely, Aclara shall at its expense: (a) procure for Licensee the right to continue use of Aclara Licensed Software, or (b) replace or modify the same with an equivalent non-infringing product with functionality substantially similar to the product it is replacing. **THE REMEDIES IN SECTIONS 13A AND 13C ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES AND ACLARA'S SOLE AND EXCLUSIVE OBLIGATIONS AND LIABILITIES WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.**
- D. By Licensee. Licensee shall defend Aclara from and against any Claims to the extent arising from Licensee's actions or inactions that cause the Exceptions set forth above to occur, and Licensee shall indemnify and hold harmless Aclara from all damages, costs and liabilities awarded to such third party by legal judgment or settlement resulting from such Claims. The foregoing indemnity

obligation is subject to the following: (i) Aclara promptly notifies Licensee in writing of such Claims; (ii) Aclara fully cooperates with Licensee in assisting in the defense or settlement of such Claims; and (iii) Licensee has the sole right to conduct the defense of such Claims or to settle such Claims. Nothing herein shall waive or limit the Licensee's defense of governmental immunity as a bar to Licensee's liability for Claims described above.

14. Limitation of Liability and Damages. Notwithstanding anything contained herein to the contrary, the total aggregate liability of Aclara to Licensee for any and all liability arising out of or in connection with the performance of this Software License Agreement shall be limited to the aggregate sum of payments made by Licensee to Aclara under this Software License Agreement. **IN NO CASE SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES OR FOR THE LOSS OF BENEFIT, PROFIT, REVENUE, OR DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
15. Uniform Computer Information Transactions Act. The Uniform Computer Information Transactions Act (the "Act"), including any law that incorporates substantially all of the provisions of the Act, however titled, shall not apply to this Software License Agreement.
16. Assignment. Neither Party may assign its rights or obligations under this Software License Agreement without the prior written consent of the other Party, provided however, that Aclara may assign this Software License Agreement to an Affiliate, or to entity acquiring all or substantially all of the assets of Aclara if the acquiring entity is an Affiliate, or, by operation of law, to an entity into which Aclara is merged if the surviving entity is an Affiliate, in each such case without prior approval of the other Party. In any such event, Aclara shall provide the other Party with prompt written notice of such assignment. As used herein, "Affiliate" means a company which either owns or controls Aclara or which Aclara owns or controls directly or indirectly, or is under common control directly or indirectly with Aclara through a common parent company.
6. Notices. Any notices required or permitted hereunder shall be in writing and shall be deemed to be sent by Electronic Mail, United States registered or certified mail, postage prepaid, to the respective Parties at the addresses shown below. Notices so given shall be deemed received upon receipt of the Electronic Mail or three business days from the date of deposit in the U.S. mails.

If to Aclara:
 Aclara Technologies LLC
 Attn: Legal Department
 77 West Port Plaza
 Suite 500
 St. Louis, MO 63146-3126

If to Licensee:
 City of Ann Arbor
 Attn: Craig Hupy
 301 E. Huron Street
 Ann Arbor, MI 48104

With copy to:
 City of Ann Arbor
 Attn: Office of City Attorney
 301 E. Huron Street
 3rd Floor
 Ann Arbor, MI 48104

17. Injunctive Relief. Licensee agrees that notwithstanding anything contained herein to the contrary, in the event of a breach by Licensee of the terms of this Software License Agreement, or if Aclara has reasonable reason to believe that such a breach is imminent, Aclara shall have the unequivocal right to seek and obtain timely injunctive relief against Licensee in order to protect Aclara's rights in and to the Licensed Software.

**ATTACHMENT A
LIST OF SOFTWARE SERVICES PARAMETERS**

I. ACLARA SOFTWARE

<u>Vendor-Supplier</u>	<u>Software Description</u>	<u>Computer Equipment Type</u>	<u>Model</u>	<u>Qty</u>	<u>Licensing Parameters</u>	<u>Qty</u>
IA. <u>Software</u>						
Aclara	AclaraONE	INTEL Processor	NCC-SW-25K-50K	1	Max Edge Devices ¹	25K-50K ²
					Maximum Utilities ³	1

II. THIRD PARTY SOFTWARE - NOT INCLUDED IN THIS SOFTWARE LICENSE AGREEMENT

<u>Vendor-Supplier</u>	<u>Software Description</u>	<u>Model Type</u>	<u>Qty</u>	<u>Licensing Parameters</u>	<u>Qty</u>
Microsoft	Windows 2012R2-64 bit Professional Server Operating System (TWACS Server)	INTEL	2	Not specified by Aclara	1 ⁴
Microsoft	SQL Server Version +CAL	Standard	1	CAL ⁵	X

Licensing of the software shall be directly with the identified vendor/supplier under the terms and conditions of the vendor's/supplier's applicable software license agreement.

¹ Maximum Edge Devices/Endpoints count the aggregate sum of all Aclara electric hardware devices controlled (e.g. meters + DRUs +CSTs +IHDs).
² If License exceeds the quantity of maximum Edge Devices for the quantity stated above, an additional fee may be charged based on Aclara's current price in effect
³ This software is for use by Licensee for use in Licensee's own utility business. Use of the Software to provide AMI related services to other utilities/entities (i.e. "Multi-Utility") is strictly prohibited unless otherwise noted and provided for herein.
⁴ This software is licensed to Licensee based upon the stated quantity of processors. Installation of the software on additional processors or computers will entail the payment of an additional fees to Aclara.
⁵ CAL means client access license and governs the number of users that can have access to the software per Microsoft Volume Licensing Product User Rights document.

**ATTACHMENT A
LIST OF SOFTWARE SERVICES PARAMETERS**

III. THIRD PARTY SOFTWARE -- INCLUDED IN THIS SOFTWARE LICENSE AGREEMENT
Computer Equipment

<u>Vendor-Supplier</u>	<u>Software Description</u>	<u>Model Type</u>	<u>Qty</u>	<u>Parameter</u>	<u>Qty</u>	<u>Owner</u>
Aclara	Oracle STANDARD EDITION® (Version 11g) (Required for Electric AMI)	1 ea. INTEL (CISC) Processor	4	Processor Maximum Utilities	2 ⁷ 1 ⁸	Oracle
Aclara	Asynchronous Data Link Control (ADLC) Protocol Driver (Required for Electric AMI)	1 ea. INTEL (CISC) Processor	1	Central Processing Unit (CPU) Maximum Utilities	1 ¹⁰ 1 ¹⁴	SISCO

IV. COMPONENTS INCLUDED IN THIS LICENSE AND ASSOCIATED FEES

IV.A AclaraONE Software License Fee Software License Fee
\$37,000

V. INCREMENTAL LICENSE FEES ABOVE "MAXIMUM LICENSING PARAMETERS":¹⁻³

Item No. Parameter Descriptions

V.A If License exceeds the quantity of maximum Endpoints for the quantity stated above, Licensee will move to the next tier and an additional license fee will be charged based on Aclara's current price in effect for that tier. An additional maintenance fee will also apply.

V.B Non-Hosted - Multi-utility license--Allows Licensee to read meters for one additional utility (Optional)³ \$ Provided upon Request.

One Time Fee Add-On

VI. ANNUAL MAINTENANCE FEES:

Item No. Level of Services Fees

VI.A Non-Hosted Base Level is 20% of cumulative one time License Fees

VI.B Non-Hosted Premier Level is 30% of cumulative one time License Fees

⁶ This software is restricted for use with Aclara Technology Application.

⁷ This software is licensed to Licensee based upon the stated quantity of processors. Installation of the software on additional processors or computers will entail the payment of an additional licensing and/or ASP fee to Aclara.

⁸ This software is licensed to Licensee for use in Licensee's own utility business. Use of the Software to provide AMI-related services to other utilities/entities (i.e. "Multi-Utility") is strictly prohibited unless otherwise noted and provided for herein.

**ATTACHMENT A
LIST OF SOFTWARE SERVICES PARAMETERS**

Non-Hosted Maintenance Agreement annual Fees are a percentage of Cumulative⁹ Non-Hosted License Fees based on Customer Selected Level of Services. Annual Non-Hosted Maintenance Fees are provided for a term of 12 months and are automatically renewable for 12 month Renewal Periods, subject to an annual adjustment. Please see Aclara Maintenance Agreement for complete pricing, terms and conditions and details of Services Levels and Hosted Solution Fees.

VII. ADDITIONAL DATA EXPORT CUSTOMIZATION FORMAT:¹⁰

Item No. Additional Data Export Customization Fees

VII.A Aclara will provide a firm, fixed price quotation for any additional formats once data is made available. Maximum Not-to-Exceed amount is dependent upon Licensee's requirements.

⁹ Non-Hosted License Fees are the summation of all license fees in sections III and IV, including incremental fees for any additional Endpoints, but does not include fees, if any, for additional data export customization (section VII).

¹⁰ License Fee includes one data export format to permit data to be imported into utility's billing system. Price will be based upon Licensee's requirements when requesting additional export formats.